

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:09-cr-0117-JAJ
)	
SCOTT RYAN DEMUTH)	REPLY TO GOVERNMENT'S
Defendant.)	OPPOSITION TO DEFENDANT'S
)	MOTIONS <i>IN LIMINE</i>

The defendant Scott DeMuth by his undersigned counsel submits the following reply to the government's opposition to the defendant's motions *in limine*:

I. The defendant has requested that other than the two acts specified in the one count conspiracy indictment, any unspecified acts – 24 in number - for which unknown persons took credit under the name of the ALF, must be precluded from the trial of this case. The government response stated that, “[t]he Animal Liberation Front (ALF) claimed responsibility for each of these acts. The purpose of each of these attacks is to interfere with the operations of all animal enterprises. *The United States does not intend to offer evidence or prove that any of these additional attacks was committed by Defendant DeMuth.*” (Emphasis added).

While the government concedes that it has no evidence linking the defendant to any other ALF acts, its response is ambiguous about its intent to put in evidence about these other 24 incidents for which unknown persons took credit using the ALF banner. Since the indictment does not charge the defendant with being a member of ALF or involved in an ALF conspiracy, since it is undisputed that the ALF is a decentralized organization with no command structure, with actions taken up independently with no formal

direction, and since there is no evidence that the defendant was involved in any other purported ALF actions, there is no relevance to placing before the jury any of the other unspecified purported ALF. Clearly, the prejudice generated by such evidence would out-weigh the probative value, if any, of such evidence. Wherefore, the defendant seeks an Order precluding the government in its case-in-chief from introducing for any reason any action other than the Iowa and Minnesota acts specified in the indictment.

II. Secondly, the defendant's actions and agreements, not his political beliefs are what is relevant to this trial. The government's limited understanding of the diverse beliefs comprising twenty-first century "anarchism" is a compelling example of why we don't label someone based on simplistic, prejudicial characterizations and use such as evidence in a criminal trial. The government argues that the defendant's "belief in anarchy as opposed to a government of laws is relevant to this trial."

However, anarchism is not so narrowly and prejudicially defined. The following statements by writers and political scientists are only some examples of how anarchism is defined and interpreted:

Anarchists, I discovered, did not believe in anarchy as it is usually defined - disorder, disorganization, chaos, confusion, and everyone doing as they like. On the contrary, they believed that society should be organized in a thousand different ways, that people had to cooperate in work and in play, to create a good society. But anarchists insisted any organization must avoid hierarchy and command from the top; it must be democratic, consensual, reaching decisions through constant discussion and argument. -Howard Zinn
Declarations of Independence .

While the popular understanding of anarchism is of a violent, anti-State movement, anarchism is a much more subtle and nuanced tradition than a simple opposition to government power. Anarchists oppose the idea that power and domination are necessary for society, and instead advocate more co-operative, anti-hierarchical forms of social, political and economic organization..' The Politics of Individualism: Susan Brown

As both political philosophy and personal lifestyle, social anarchism promotes community self-reliance, direct participation in decision-making, respect for nature, and nonviolent paths to peace and justice.
Social Anarchism Magazine

In other words, anarchism is a political theory which aims to create a society within which individuals freely co-operate together as equals. -Anarchist FAQ

One thing that soon becomes clear to any one interested in anarchism is that there is not one single form of anarchism. Rather, there are different schools of anarchist thought, different types of anarchism which have many disagreements with each other on numerous issues. These types are usually distinguished by tactics and/or goals, with the latter (the vision of a free society) being the major division. –Anarchist FAQ

There have been many styles of thought and action that have been referred to as "anarchist." It would be hopeless to try to encompass all of these conflicting tendencies in some general theory or ideology. And even if we proceed to extract from the history of libertarian thought a living, evolving tradition, as Daniel Guérin does in Anarchism, it remains difficult to formulate its doctrines as a specific and determinate theory of society and social change. Notes on Anarchism- Noam Chomsky

"There is no single defining position that all anarchists hold, and those considered anarchists at best share a certain family resemblance." Oxford Political Dictionary.

As one can easily see, the government's view of anarchism is quite stilted and misinformed. This should not be a trial about "anarchism" and its different meanings. If the government puts forth its view of anarchism the defense is prepared to call experts to combat such a prejudicial and stunted view of this area of political theory. These are clearly highly prejudicial collateral issues which do not belong in an American courtroom.

Further, it violates the most fundamental First Amendment principles to use the books and other political literature in a defendant's possession as evidence of a crime. A graduate student in sociology like the defendant may read a variety of political materials, including ones that advocate direct action against animal enterprises, but that is not evidence that a defendant is part of an illegal conspiracy or even agrees with the advocacy contained in such literature. This Court must not allow this trial to become a trial about the defendant's purported political beliefs, or his right to read and possess all kinds of books, magazines and pamphlets.

III. The government should not be allowed to inject the criminal investigation into activities of the RNCWC into the trial of this case. The defendant was not charged with any wrong doing related to the Republican National Convention. He was not even involved with the RNCWC at the time his residence was searched and his journals seized.

It is not relevant or at all probative of the charges in this case. It is highly prejudicial to inject "the investigation into the Republican National Convention Welcoming Committee," as the government argues, into the trial of this case. Nor does it make any sense as the government argues that "the discovery of the Defendant Demuth's chronicled activities in the latter part of 2008 explain[s], in part, the timing of the 2009 indictment." The conspiracy here concerns acts which took place in 2004 and 2006 and the defendant's activities in 2008 are totally irrelevant. Further, the jury can be informed that the defendant's journal - if it survives the defense Motion to Suppress - was recovered from the defendant in 2008 without detailing where and how it was recovered.

IV. The government claims it has some evidence linking the defendant to the 2006 ATK incident. It has failed however to provide such evidence to the defense, and has failed as an initial matter to satisfy its burden of showing that the defendant was involved in the 404(B) acts it seeks to introduce at trial. Further, the prior public civil disobedience trespass on ATK property is not in any way similar to the acts charged in the indictment here and is not admissible to show any of the planning, pattern, intent which is required under 404 (B).

V. The defendant had been involved with confidential research at the time he was subpoenaed to the grand jury. He in fact did assert this confidentiality claim at his contempt hearing¹. The defendant's refusal to testify does not show consciousness of guilt nor membership in the charges conspiracy. Rather, his refusal is an assertion of the Code of Ethics of his profession and his opposition to the misuse of the grand jury power

¹ There is also may be a question whether the defendant was formally given immunity prior to his contempt citation. If not he had a Fifth Amendment right not to testify and his refusal can not be used against hi at this trial.

to gather information about political movements. It is entirely speculative to use his principled opposition to the grand jury subpoena as evidence of guilt.

Finally there is no legitimate reason for any government witness to inject the word "terrorism" into the trial of this case. Any government agent should be instructed to leave the word terrorism out his/her testimony about their assignment or job title.

Respectfully submitted,

Dated: September 7, 2010

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To: Clifford R. Cronk III
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Please take notice that, counsel for Scott DeMuth electronically filed on September 7, 2010, REPLY on behalf of defendant Scott DeMuth.

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